Supreme Court, U.S.
FILED
FEB 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1184

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1988

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L. LEE BEARDSLY, *et al.*,
*Cross-Petitioners,*
v.
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY,
*Cross-Respondent.*

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**On Cross-Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit**

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## BRIEF OF CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY IN RESPONSE TO CROSS-PETITION FOR A WRIT OF CERTIORARI

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JAMES P. DALEY
STUART F. GASSNER
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY
One North Western Center
Chicago, Illinois 60606
(312) 559-6100

RALPH J. MOORE, JR.
(Counsel of Record)
D. EUGENIA LANGAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000

FRANK W. DAVIS, JR.
GAMBLE, RIEPE, WEBSTER, DAVIS & GREEN
2600 Ruan Center
Des Moines, Iowa 50309
(515) 243-6251

*Counsel for Cross-Respondent Chicago & North Western Transportation Company*

February 16, 1989

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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## INTRODUCTION AND SUMMARY OF ARGUMENT

The Chicago & North Western Transportation Company has petitioned for certiorari (No. 88-994) from the judgment of the United States Court of Appeals below.[1]

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[1] To assist the Court in keeping the parties straight, we will refer to the Chicago & North Western Transportation Company, which was a defendant below and is the petitioner in No. 88-994 and cross-respondent here, simply as "C&NW"; to the unions who were also defendants below and are respondents and cross-respondents here as "the unions"; and to L. Lee Beardsly and the other in-

That petition presents the question whether the six-month limitations period under *DelCostello* v. *Teamsters*, 462 U.S. 151 (1983), for "hybrid" actions by employees against employers and unions should be "borrowed" in actions to compel labor arbitration. The plaintiffs in this case claimed statutory and contractual rights to superior seniority and to jobs held by other C&NW employees, and alleged that their failure to obtain those jobs was due to "hybrid" breaches of C&NW's duties and the unions' duty of fair representation. The actions here were brought more than six months—and in many cases, several years —after the events that gave rise to the individual plaintiffs' claims. The court of appeals agreed with C&NW and the unions that the individual plaintiffs' claims could not be heard in federal court because, among other things, they were time-barred under the *DelCostello* limitations rule, but rejected the argument that an order compelling arbitration of those claims was likewise time-barred.

C&NW's petition contends that the court of appeals erred in refusing to apply the *DelCostello* limitations rule to bar the order compelling arbitration. In their cross-petition for certiorari, the individual plaintiffs' primary contention is that the court erred in applying *DelCostello* to any aspect of this case, because the two-year limitation for review of arbitration awards in § 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r), should be borrowed for "hybrid" claims arising in the railroad in-

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vidual plaintiffs below, who are cross-petitioners here, as the "plaintiffs" or "cross-petitioners."

In Nos. 88-968 and 88-1169, the unions seek review of the same decision of the United States Court of Appeals for the Eighth Circuit as to which review is sought in this case. The individual plaintiffs here are among the individual respondents in No. 88-1169, along with nine ground service employee plaintiffs whose attack on an arbitration award is not at issue in this case. See Petition for Certiorari, No. 88-994, at 5 n.6. The unions' petitions also present the limitations question presented by C&NW's petition in No. 88-994, and certain related issues.

dustry, which of course is subject for the Railway Labor Act, rather than the National Labor Relations Act.

The cross-petitioners' first question presented, concerning the possible borrowing of § 3 First (r) in "hybrid" cases under the Railway Labor Act, presents a question of some importance, although the cross-petitioners' contentions regarding that question have been uniformly rejected by the courts of appeals, which have applied the *DelCostello* limitation period under the Railway Labor Act. On the other hand, the cross-petitioners' second and third questions presented do not warrant review. Both those questions are discussed in the cross-petition under the caption, "the Eighth Circuit erred in its application of summary judgment principles to the jurisdictional issues raised in this case." The contention is essentially that the Eighth Circuit erred in its determination under settled summary judgment principles that the plaintiffs' affidavits failed to raise a genuine dispute as to certain material issues in the case. The sufficiency of the plaintiffs' affidavits obviously does not warrant review by this Court.

## ARGUMENT

1. The cross-petition asks the Court to determine that in an action to compel Railway Labor Act arbitration, the two-year limitation in § 3 First (r) of the Railway Labor Act should be borrowed instead of the six-month limitation under *DelCostello*. But § 3 First (r) does not apply to suits to *compel* arbitration; it applies only to suits to *set aside* arbitration awards. Thus, all courts of appeals that have considered the contention that § 3 First (r) should be applied to "hybrid" Railway Labor Act cases have rejected it.[2]

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[2] *Sisco* v. *Consolidated Rail Corp.*, 732 F.2d 1188, 1193-94 (3d Cir. 1984); *Brock* v. *Republic Airlines*, 776 F.2d 523, 526 (5th Cir. 1985); *Ranieri* v. *United Transp. Union*, 743 F.2d 598, 599-600 (7th Cir. 1984).

Instead, all courts of appeals that have considered the question under the Railway Labor Act have applied the six-month *DelCostello* limitation to "hybrid" cases[3] and also non-hybrid cases implicating collective bargaining relationships.[4] Those decisions are premised on the policies that led this Court to adopt the *DelCostello* rule: federal labor law favors stable labor-management relations and the "relatively rapid final resolution of labor disputes" where collective bargaining relationships are implicated. 462 U.S. at 168, 169, 171. And the courts of appeals likewise agree that those policies clearly apply to action to compel arbitration of labor disputes: "Arbitration is a policy at the heart of federal labor law * * *," and "[t]o delay its occurrence" by applying lengthy limitations "would defeat its purpose—the speedy resolution of [labor] disputes." *McCreedy* v. *Local Union No. 971*,

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[3] See *Welyczko* v. *U.S. Air, Inc.*, 733 F.2d 239, 240 (2d Cir. 1984); *Sisco* v. *Consolidated Rail Corp., supra*, 732 F.2d at 1192-94; *Triplett* v. *Brotherhood of Ry., Airline & S.S. Clerks*, 801 F.2d 700, 702 (4th Cir. 1986); *Brock* v. *Republic Airlines, supra*, 776 F.2d at 525-26; *Ranieri* v. *United Transp. Union, supra*, 743 F.2d at 600; *Barina* v. *Gulf Trading & Transp. Co.*, 726 F.2d 560, 563 n.6 (9th Cir. 1984); *Barnett* v. *United Air Lines*, 738 F.2d 358, 363-64 (10th Cir. 1984); *Smallakoff* v. *Air Line Pilots Ass'n*, 825 F.2d 1544, 1545-46 (11th Cir. 1987).

[4] *Robinson* v. *Pan American World Airways*, 777 F.2d 84, 88 (2d Cir. 1985) (applying *DelCostello* to claim that carrier discharged plaintiff for union activities, in violation of §§ 2 Third and Fourth of the Railway Labor Act); *Brotherhood of Loc. Engineers* v. *Atchison, T. & S.F. Ry.*, 768 F.2d 914, 919 (7th Cir. 1985) (applying *DelCostello* to claim that railroad breached Railway Labor Act bargaining duties); *Coyle* v. *Brotherhood of Ry., Airline & S.S. Clerks*, 838 F.2d 1404, 1406 (5th Cir. 1988) (applying *DelCostello* to claim that carrier discharged employee in violation of § 2 Eleventh of the Railway Labor Act); *International Ass'n of Machinists* v. *Aloha Airlines*, 790 F.2d 727, 734 (9th Cir. 1986) (applying *DelCostello* to claim that employer violated Railway Labor Act status quo requirements).

*UAW*, 809 F.2d 1232, 1237 (6th Cir. 1987).[5] The underlying issue is what federal labor policy requires, and the relevant considerations are identical in these cases, whether the collective bargaining relationship is governed by the National Labor Relations Act or the Railway Labor Act.

2. The individual plaintiffs also suggest that this Court's recent decision in *Reed* v. *United Transp. Union*, 109 S. Ct. 621 (1989), supports their position that the six-month limitation period under *DelCostello* should not be applied in railroad industry cases and that a two-year limitation should be applied instead. *Reed* provides no support whatever for that contention, however. In *Reed*, this Court held that the *DelCostello* policies of fostering stable labor-management relations and the "relatively rapid final resolution of labor disputes" where collective bargaining relationships are involved are not implicated in a purely internal union dispute governed by the Labor-Management Reporting and Disclosure, or Landrum-Griffin, Act which does not involve the collective bargaining relationship. Indeed, the Court recognized that a different result may be warranted where a Landrum-Griffin claim *does* implicate the *DelCostello* policies. The Court stated that "one class" of Landrum-Griffin claims, § 101(a)(1) claims to set aside collective bargaining agreements because members were denied voting ratification rights,[6] "may have a more direct effect on collective

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[5] Accord, *Communications Workers of America* v. *Western Electric Co.*, 860 F.2d 1137, 1142-44 (1st Cir. 1988); *Associated Brick Mason Contractors* v. *Harrington*, 820 F.2d 31, 36-37 (2d Cir. 1987); *International Ass'n of Machinists* v. *Allied Prods. Corp.*, 786 F.2d 1561, 1564 (11th Cir. 1986); *Teamsters Union* v. *Great Western Chemical Co.*, 781 F.2d 764, 766, 769 (9th Cir. 1986); *Federation of Westinghouse Independent Salaried Unions* v. *Westinghouse Electric Corp.*, 736 F.2d 896, 901-02 (3d Cir. 1984). But see contrary dictum in *Niro* v. *Fearn Int'l Inc.*, 827 F.2d 173, 177 (7th Cir. 1987) (arguing for a longer limitations period).

[6] 29 U.S.C. § 411(a)(1).

bargaining," and therefore reserved judgment as to whether *DelCostello* may apply to such claims. 109 S. Ct. at 629 n.6. Here, of course, upsetting seniority rules established through collective bargaining mechanisms would directly implicate the policies that underlie *DelCostello*.

## CONCLUSION

The Cross-Petition for A Writ of Certiorari should be denied.

Respectfully submitted,

JAMES P. DALEY
STUART F. GASSNER
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY
One North Western Center
Chicago, Illinois 60606
(312) 559-6100

RALPH J. MOORE, JR.
(Counsel of Record)
D. EUGENIA LANGAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000

FRANK W. DAVIS, JR.
GAMBLE, RIEPE, WEBSTER, DAVIS & GREEN
2600 Ruan Center
Des Moines, Iowa 50309
(515) 243-6251

*Counsel for Cross-Respondent Chicago & North Western Transportation Company*

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